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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Implementation of	)	
Infrastructure Sharing	)	CC Docket No. 96-237
Provisions in the	)	
Telecommunications Act of 1996	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") on behalf of the Sprint Local Telephone companies and Sprint Communications Company L.P., hereby submits Comments in response to the November 22, 1996 Notice of Proposed Rulemaking ("NPRM") released in the above-captioned docket.

In NPRM, the Commission seeks comment on implementation of new Section 259 of the Communications Act of 1934, as amended.1 Section 259 requires incumbent local exchange carriers ("ILECs") to make available to qualifying carriers, such public switched network infrastructure, technology, information, and telecommunications facilities and functions as the qualifying carrier may request, in service areas where the qualifying carrier has requested.

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1. Communications Act of 1934, as amended, 47 U.S.C. Section 259, added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)(the "1996 Act.")

A threshold question that must be addressed is whether there is:

> overlap between those "telecommunications facilities and functions" that are the subject of Section 259(a) and interconnection, unbundled network facilities, and resale made available pursuant to Section 251(b) and (c).2

Sprint agrees that the "telecommunications facilities and functions" under Section 259(a) should be generally considered similar to the interconnection, unbundled network facilities, and resale the ILECs are required to provide under Section 251(c). However, it is also clear from the statutory directives in Section 259 that it was intended for a very different purpose.

As the Commission notes, one of the purposes of the 1996 Act and the specific purpose of Section 251 is to "remove legal and economic impediments to market entry" to increase "the opportunities for competitive entry" into the monopoly local telecommunications market.3 Another purpose of the 1996 Act is to "ensure that access to the evolving, advanced telecommunications infrastructure would be made broadly available in all regions of the nation."4

It is clear that Section 259 is designed to serve this latter purpose and is not designed to aid entry into a specific ILEC's market. On its face, Section 259 cannot be used by a

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2. NPRM at para. 10.

3. NPRM at para. 3.

4. Id.

qualifying carrier to enter the market of the ILEC to which the request under Section 259 was made because Section 259(b)(6) does not require ILECs to "engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such local exchange carrier's telephone exchange area."

Thus, while the facilities and functions under Section 259 are similar to the interconnection, unbundled network elements, and resale of Section 251; the sharing arrangements under Section 259 are distinct and separate from the required provision of services under Section 251 and are only available in circumstances where the requesting qualifying carrier is not competing with the ILEC. If and when the qualifying carrier seeks to compete with the ILEC, the sharing arrangements under Section 259 must be terminated, and the qualifying carrier can then take advantage of Section 251.

In the NPRM the Commission seeks comment on what is included in "public switched network infrastructure, technology, information, and telecommunications facilities and functions."5 Sprint contends that it includes those facilities necessary to provide voice and data communications and signaling capability, including access to industry standard databases and connections

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5. NPRM at para. 9.

to other networks. Those are the advanced telecommunications infrastructure facilities that would ensure that the qualifying carrier can offer advanced telecommunications services and thus will fulfill the Congressional goal that those service "be made broadly available in all regions of the nation."6 However, in order to meet those goals it is not necessary, nor should it be required, that the ILEC enter sharing arrangements for other systems such as service assurance systems, service activating systems, service creating systems, accounting and financial systems, billing, marketing and accounting service.

Likewise, ILECs should not be required to provide marketing information. While at the time of establishing the sharing arrangement, the qualifying carrier cannot be competing against the ILEC, nothing prevents the qualifying carrier from terminating the sharing arrangement and commencing competition. Sprint does not believe that Section 259 was intended to create a situation where potential competitors have access to proprietary marketing information. Similarly, ILECs should not be required to share proprietary facilities and functions if the ILEC can demonstrate that there are non-proprietary alternatives available to the qualifying carrier.7

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6. NPRM at para. 3.

7. See, 51.317(b) of the Commission's Rules regarding the withholding of proprietary unbundled network elements when the ILEC demonstrates the availability of an alternative.

Sprint does not agree with the Commission's tentative conclusion that mandatory patent licensing is required to effectuate the sharing arrangements under Section 259.8 Such arrangements present complex and cumbersome intellectual property ownership and valuation/royalty issues that are unnecessary, may well be economically unreasonable, and are generally beyond the scope of regulatory proceedings. Mandatory licensing has rarely been required under U.S. law, because it reduces the incentive to develop new technologoies and functions and may also require the disclosure of sensitive proprietary information. The intended sharing result can be accomplished more efficiently and reduce the adverse impact of these licensing problems through the use of agreements to provide services to the qualifying carrier.

In conclusion, Section 259 has a purpose that is separate and distinct from Section 251. The sharing arrangements under Section 259 should only be available to non-competing qualified carriers. Furthermore, because a qualifying carrier may subsequently commence competing with the ILEC, proper care must be taken with regard to ILEC's proprietary information so as not

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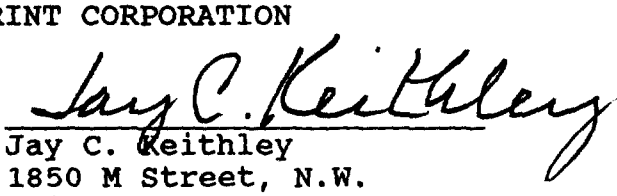
8. NPRM at para. 15.

to confer any undue competitive advantage to the qualifying carrier.

Respectfully submitted,

SPRINT CORPORATION

By 

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December 20, 1996

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 20th day of December, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Corporation" in the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket No. 96-237, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

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